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BAE SYSTEMS INFORMATION AND ELECTRONIC SYSTEMS INTEGRATION INC.

65 Spit Brook Road

P.O. Box 868 NHQ1-719

Nashua, NH 03061-0868

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In re Application of

KYLER *et al*

JAN 22 2008

U.S. Application No.: 10/553,825

PCT No.: PCT/US04/12425

PATENT DEPARTMENT

Int. Filing Date: 21 April 2004

Priority Date: 21 April 2003

DECISION

Attorney Docket No.: 20030081

For: PROCESS FOR PREPARING HIGH

PURITY TNT

This decision is in response to applicants' petition under 37 CFR 1.181 filed 04 December 2007. No fee is required.

### BACKGROUND

On 16 February 2007, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants were given two months to respond.

On 19 April 2007, applicant purportedly filed a response which contained, *inter alia*, an executed declaration by the nonsigning inventor, Dr. Keith S. Kyler. These papers were not located in the file.

On 14 November 2007, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to the petition decision mailed 16 February 2007 within the time period set.

On 04 December 2007, applicants filed the subject petition to withdraw the holding of abandonment which was accompanied by, *inter alia*, copies of the documents purportedly filed 19 April 2007 and a stamped postcard receipt for the 19 April 2007 documents.

### DISCUSSION

#### **Petition to Withdraw Holding of Abandonment**

A review of the subject application shows that the response purportedly filed in the above-captioned application on 19 April 2007 was not located in the file.

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MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicants have provided a copy of the date-stamped postcard receipt for documents submitted 19 April 2007. The postcard receipt records that among the papers received in the USPTO included "2 pages signed declaration and power of attorney." The postcard receipt is stamped "Rec'd PCT/PTO 10 APR 2007" across its face. The U.S. application number and docket number are listed on the postcard receipt. Applicants provided a copy of these papers as required.

Accordingly, applicants have provided *prima facie* evidence that an executed two-page declaration was received by the USPTO on 19 April 2007.

#### **DECISION**

For the reasons above, applicants' petition to withdraw the holding of abandonment is **GRANTED**.

The Form PCT/DO/EO/909 mailed 14 November 2007 is hereby **VACATED**.

#### **Petition Under 37 CFR 1.47(a)**

In the response originally filed 19 April 2007, applicants submitted a declaration executed by the nonsigning inventor, Mr. Kyler. This declaration is in compliance with 37 CFR 1.497(a) and (b).

#### **CONCLUSION**

Since an executed declaration by the nonsigning inventor has been provided, the petition under 37 CFR 1.47(a) is **DISMISSED** as **MOOT**.

However, the prior declaration filed 08 January 2007 was deemed to be a partial declaration in the decision dated 16 February 2007. Applicants were requested to provide the complete declaration signed by Andrew R. Wilson and Curtis Teague. In the response originally filed 19 April 2007, applicants did not address this defect.

Applicants must provide an oath or declaration in compliance with 37 CFR 1.497(a) and (b) within **TWO MONTHS** of the date of mailing of this decision.

Failure to submit the required reply will result in the **ABANDONMENT** of this

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application.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in cursive script that reads "James Thomson".

James Thomson  
Attorney Advisor  
Office of PCT Legal Administration

Tel.: (571) 272-3302